BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
The Effect of Foreign Mobile Termination Rates	)	IB Docket No. 04-398
On U.S. Customers	)	
	)	
	)	

COMMENTS OF SPRINT CORPORATION

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SUMMARY

Sprint welcomes the Commission's inquiry into foreign mobile termination rates. As described below, Sprint believes high termination rates charged by foreign mobile carriers are detrimental to the interests of U.S. carriers and consumers. The justification behind most foreign mobile carriers' high rate levels is the "Calling Party Pays" (CPP) inter-carrier compensation system established in Europe and an increasing number of other countries. It is not CPP *per se* which creates problems for U.S. interests, but the high level of rates from CPP carriers and the incongruence of CPP and the "receiving party pays" system used in the United States compensation scheme. These rates, which cannot be charged on a reciprocal basis by U.S. wireless carriers because of Commission policy, result in a substantial and increasing outflow of payments from U.S. carriers and high surcharges to U.S. consumers. Such a one-sided result, which provides benefits only to foreign mobile carriers in the form of non-cost-based subsidies, is by its very nature anti-competitive. Foreign mobile carriers exert market power to collect these rates in the same way that the Commission has recognized that competitive local exchange carriers can exert market power to collect terminating access charges from interexchange carriers – they provide the only means to terminate traffic to their subscribers.

The data Sprint provides below show a trend toward increased traffic levels for foreign mobile termination and increased payments to foreign mobile operators. For its U.S.-originated traffic, Sprint made net payments of over $120 million for foreign mobile termination charges in 2004.

The criticism of the consumer surcharges set by U.S. international carriers for foreign mobile termination is misdirected. Sprint's goal in setting such surcharges is to fully recover the direct costs of mobile termination and associated costs, not to create a new profit center.

Sprint recommends that the Commission initiate a rulemaking to establish a firm policy aimed at reduction of foreign mobile termination rates and should include consideration of an appropriate benchmarks system, similar to the original settlement rates benchmark system. The Commission should hold that U.S. carriers may not pay new or increased mobile termination rates that are imposed retroactively or without a minimum of 30 days advance notice of their effectiveness. The Commission should also examine the barriers to direct connection that have been erected by foreign mobile carriers and should scrutinize the adoption of new "calling party pays" regimes and the setting of high mobile termination rates by foreign governments.

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Sprint Corporation ("Sprint") hereby submits its comments in response to the Notice of Inquiry released by the Commission in the above-captioned proceeding ("*Notice*").[1] As a U.S. international carrier which has its primary international interests in the wholesale and enterprise markets, rather than the long-distance consumer market, and as a major U.S. wireless carrier without significant ownership interests in or by overseas mobile carriers, Sprint brings a unique perspective to this proceeding. Sprint has significant concerns about the current situation regarding mobile termination rates in many countries. As described below, Sprint's concerns are primarily practical and based on matters of market distortion and anti-competitive consequences arising from high foreign mobile termination rates, not just theoretical analysis of how much revenues from such rates exceed costs. Sprint believes that there would be positive benefits for U.S. consumers and the international services market generally if the Commission were to decide to initiate a rulemaking proceeding to address the questions raised by high foreign mobile

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[1] The Effect of Foreign Mobile Termination Rates on U.S. Customers, *Notice of Inquiry*, 19 FCCR 21395, IB Docket No. 04-388, FCC 04-247 (released Oct. 26, 2004).

termination rates and to explore options that would have the effect of lowering these rates. To that end, Sprint provides its views and data in response to the *Notice*.

I. THE COMMISSION SHOULD ADDRESS THE PROBLEMS CREATED FOR U.S. CARRIERS AND CONSUMERS BY "CALLING PARTY PAYS."

A. The Use Of The "Calling Party Pays" Inter-Carrier Compensation System In Many Countries Results In Inflated Out-Payments By U.S. International Carriers To The Detriment Of U.S. Interests.

Sprint congratulates the Commission for placing its discussion of the "calling party pays" ("CPP") compensation regime foremost in the discussion in the *Notice*. It is self-evident that the adoption of CPP compensation schemes in many countries is the major root cause underlying the concerns of the U.S. international carriers. For purposes of this proceeding, Sprint does not challenge the economic theory underlying CPP nor does it offer a critique why CPP may or may not be superior or inferior to the "receiving party pays" ("RPP") scheme used in this country. Rather, Sprint notes the obvious fact that it is the dissonance between CPP and RPP regimes that creates problems for U.S. carriers and for U.S. consumers who rely on those carriers to make telephone calls overseas.

In Europe and other areas overseas where CPP is prevalent, consumers dialing from landline telephones are generally aware, based on the differences in dialing codes, when they are calling mobile telephones and what the consequences will be, in terms of surcharges, for such calls. This awareness allows consumers to adjust their calling habits in conformity with their expectation of the prices for such calls. While some U.S. consumers calling foreign mobile telephones may have the same level of awareness, many (perhaps most) do not. Sprint submits, however, that it is not the level of surprise and dismay on the part of uninformed U.S. callers when presented with high surcharges for calls to foreign mobile telephones that is most detrimental to U.S. interests, but rather the inherent imbalance in payments between carriers that ultimately results in harm to U.S. consumers.

The *Notice* asks several questions that may be characterized as seeking information about the microeconomic aspects of behavior by mobile service subscribers in CPP regimes.[2] While these questions are interesting as a source of speculation, Sprint is aware of no hard data or research on which to base conclusions. As a wireless carrier, Sprint believes consumer choices in the United States are made largely on the basis of price, network and service quality, customer service, and premium features and options, including those related to handsets. There is no reason to believe that these factors will differ greatly from those in play in countries with CPP regimes. While mobile termination charges may be a sub-factor in the evaluation of the attractiveness of a mobile service – especially if a mobile telephone is used to receive business calls from customers or clients and the charges for calling it are outside the norm established by other operators in that market – there is no evidence that consumers in CPP countries are blessed with a higher level of altruism such that their choices are guided by the relative costs imposed on other parties.

Rather than speculate on consumer motives in selecting particular wireless services in CPP countries, Sprint believes that the Commission should focus on the "big picture" consequences of high foreign mobile termination rates where starkly different national regimes – CPP and RPP – are involved. If all countries utilized CPP, high mobile termination rates would have little consequence for bilateral relationships between international carriers. International carriers in bilateral relationships in CPP countries having roughly even levels of originating traffic that is roughly symmetrical in terms of the break-out between mobile and fixed traffic will

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[2] *Id.* at ¶ 9.

approach a net balance of zero in their accounting for this traffic, depending on the similarity of the termination rates charged by the mobile carriers in the respective countries. Often the mobile termination rates are much higher than the rates for fixed termination, but if the mobile rates and volumes in the respective countries combine at nearly the same levels, they will offset each other for the most part, with relatively small settlement payments passing through the bilateral relationship.

In relationships between a carrier in an RPP country (such as the United States), however, and a carrier in a CPP country, such off-sets do not apply. On outbound traffic, U.S international carriers must pay additional charges for termination from foreign mobile carriers passed through by foreign fixed carriers, and must surcharge their customers to defray this expense. But on inbound traffic, U.S. carriers do not impose additional charges for terminating calls to wireless carriers. Indeed, U.S. wireless carriers have effectively been precluded from imposing access charges for termination of long-distance traffic on their networks of any sort, international or domestic.[3] U.S. wireless subscribers thus find themselves subject to an "APP" regime ("always the party that pays") – they pay to make calls to foreign countries and pay more if the call is to foreign mobile telephones (as do U.S. wireline subscribers as well), and they pay, as part of their normal service arrangements to acquire "air-time," to receive calls from foreign locations. The result is a substantial net outflow of payments from the United States to countries with CPP regimes for mobile termination, one that is growing more and more as overseas consumers' use

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[3] *See* Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges, 17 FCCR 13192, WT Docket No. 01-316, FCC 02-203 (released July 3, 2002) (FCC recognized that wireless carriers have a theoretical right to charge for access but required a contract between the wireless carrier and the charged interexchange carrier).

of mobile phones increases. Sprint estimates its current total out-payment for mobile termination for calls originating in the United States to be over $120 million annually.

Although they have a very different set of causes for their existence, these net payments out from the United States to CPP countries in many ways resemble the imbalance in payments for international settlements that prompted the Commission to develop the successful "benchmark rates" policy that has been a driving force in lowering fixed termination rates in many parts of the world.[4] In the mid-1990's, the Commission faced a substantial imbalance in settlement payments because of high, if symmetrical, international settlement rates, and comparatively low volumes of traffic originating from foreign countries for termination in the United States because of high collection rates in those countries. Most, but not all, of those countries were in the developing world. Today, the Commission faces a substantial imbalance in international settlement payments because of highly asymmetrical settlement rates for mobile calls driven by CPP compensation schemes incongruent with the U.S. system, even where there are equivalent originating call volumes. Ominously, this imbalance is centered in the developed nations, although nations in the developing world are increasingly adopting CPP regimes that likewise result in increased settlements payments from U.S. carriers to carriers in those countries.

In 1997, the Commission found that U.S. consumers paid for international calls roughly 6½ times the rate for domestic long distance calls.[5] In Western Europe, today, Sprint estimates that, for termination of calls to mobile telephones, it pays between 3 times (Denmark) and 15 times (Austria) the rate for termination of fixed calls from the United States to those countries. These payments are passed through to Sprint's customers in the form of surcharges. Where do

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[4] International Settlement Rates, 12 FCCR 19806, IB Docket No. 96-261, FCC 97-280 (released Aug. 18, 1997) ("*Benchmark Rates Order*").

[5] *Id.* at ¶ 32.

these payments go? They go into the coffers of the foreign mobile carriers that create these charges. Whether these charges are in fact "cost-based" in some sense is only part of the question. They are undeniably paid by the customers of a U.S. carrier to a foreign carrier, for which no reciprocal compensation mechanism – from overseas to the United States – exists.

In 1997, the Commission theorized that excessive settlement payments were used by foreign carriers to meet the costs of national network development and universal service requirements, not simply to defray the costs of providing service.[6] Sprint notes that "costs" in a CPP regime can also include much more than the cost of interconnection and termination; the *Notice* cites assertions that revenues from higher termination rates could be used to subsidize consumer handsets and offset customer acquisition and billing costs.[7] There are no accounting rules that require CPP carriers to "earmark" these revenues only to meet certain costs. And the amount of revenue raised by these charges is very large, and growing.[8] Sprint believes the payments it makes to European carriers for mobile termination could be used to help defray the costs of 3G spectrum acquired by auction from European governments, the costs of acquiring other mobile operators in Europe and elsewhere, and even the costs of investment in U.S. wireless carriers that are direct competitors with Sprint.[9] In a world of global competition among carriers, such a one-sided system of payments is by its very nature anti-competitive and detrimental to U.S. interests. In 1997, the Commission determined that termination payments

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[6] *Id.* at ¶ 143.

[7] *Notice* at ¶ 10.

[8] See discussion *infra* at Section II.

[9] T-Mobile, the fourth largest U.S. wireless carrier, is German-owned, and Verizon Wireless, the second largest U.S. wireless carrier, is partly owned by Vodafone, a U.K.-based multinational that is the largest overseas wireless operator.

above the costs of providing service were non-cost-based subsidies, and stated “[i]t is this subsidy paid by U.S consumers [to foreign carriers] that is the focus of our concern, ….”[10] The Commission should have the same focus of concern in this current proceeding and move toward a rulemaking proceeding that will inhibit the ability of mobile carriers in CPP countries to collect excessively high termination charges that are substantially above the cost of providing service.

B. The Commission’s Analysis Of The Termination Rates of Competitive Local Exchange Carriers Is Analogous To That Which Should Be Applied To Foreign Mobile Termination Rates.

The *Notice* requests responses to the question whether mobile carriers in CPP or RPP countries have incentives to charge termination rates that significantly exceed the costs of termination.[11] All mobile carriers have the natural desire to maximize profit. Because subscribers pay for termination in RPP countries, however, the ability of a mobile carrier operating under that regime to raise termination rates significantly above the level of cost is limited by the subscriber’s ability to change to another, lower-priced mobile service provider. Although there is variation in the levels and terms of termination rates charged by foreign mobile carriers in CPP countries, these variations do not appear to be the result of competition or consumer choices, but rather appear to be the result of differing corporate strategies and the negotiation process between carriers.

There is in fact very little competition in the sub-market for termination of calls to mobile carriers. Even though some alternative “gray market” routes exist to terminate calls to mobile telephones in Europe and Asia, they offer poorer quality than the traditional fixed carrier gateways, are often unreliable, are not able to complete calls to roaming wireless subscribers,

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[10] *Benchmark Rates Order* at ¶ 13.

[11] *Notice* at ¶ 9.

and cannot provide features such as Caller ID. There is very little gray market activity for mobile termination in the Americas and the Caribbean. In all areas, the terminating mobile carrier has a virtual monopoly for the termination of calls directed to that carrier's subscribers. This difference distinguishes the situation of mobile termination from that of fixed termination addressed in the *Benchmark Rates Order*, where the Commission found that technological innovations, such as internet telephony, and least-cost routing mechanisms resulting from high termination rates could exert competitive pressure to lower those rates.[12]

The situation of U.S. international carriers grappling with foreign mobile termination rates is more akin to that of domestic interexchange carriers ("IXCs") dealing with the problems posed by high access charges rates charged by competitive local exchange carriers ("CLECs"). In that context, the Commission has observed:

> . . . an IXC may have no prior relationship with a CLEC, but may incur access charges simply for delivering a call to the access provider's customer. In these circumstances, providers of terminating access may be particularly insulated from the effects of competition in the market for access services. The party that actually chooses the terminating access provider does not also pay the provider's access charges and therefore has no incentive to select a provider with low rates. Indeed, end users may have the incentive to choose a CLEC with the highest access rates because greater access revenues likely permit CLECs to offer lower rates to their end users.[13]

This situation is thus substantially similar to that which faces a U.S. international carrier which has traffic to be terminated on a foreign mobile network in a CPP country. Sprint submits that it is quite likely that mobile carriers in CPP regimes are able to compete for subscribers on the basis of price by making up potential revenue shortfalls through higher termination charges that

[12] *Benchmark Rates Order* at ¶ 11 (footnotes omitted).

[13] Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers, 16 FCCR 9923, 9934-35 (¶ 28), CC Docket No. 96-262 , FCC 01-146 (released Apr. 27, 2001).

fall on the customers of other carriers who call their subscribers. While this result may be beneficial to these mobile carriers' subscribers, this price competition is bankrolled, in part, by U.S. consumers. The solution in the case of high CLEC access charges was for the Commission to establish a three-year transition plan using benchmarks that brought these rates in line with those of competing incumbent local exchange carriers.[14] While the Commission obviously does not have authority over foreign mobile carriers to order tariff filings as it does over domestic CLECs, there are actions the Commission can take that will be beneficial to U.S. consumers and carriers, which Sprint discusses below in Section III.

II. THE TREND IN THE FOREIGN MOBILE TERMINATION MARKET IS TOWARD INCREASED OUT-PAYMENTS BY U.S. CARRIERS AND NEW AND INCREASED MOBILE SURCHARGES FOR U.S. CONSUMERS.

A. New And Increased Mobile Termination Rates And Growth Of Mobile Termination Call Volumes Result In A Trend Toward Higher Settlement Payments By U.S. Carriers.

The *Notice* asks several questions seeking information about the size and scope of issues surrounding mobile termination charges, its impact on U.S. consumers, and the trends in this regard. Sprint endeavors below, within the bounds forced by the proprietary nature of a highly competitive and volatile market,[15] to provide the Commission with information that will be

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[14] *Id.* at 9936-49.

[15] Sprint regrets that the proprietary and confidential nature of its settlement agreements and much of the data involved in its settlements for foreign mobile termination preclude it from providing this data on a voluntary basis in order to assist the Commission in its analysis. Sprint stands ready to comply with any properly formulated data collection requirement, and urges the Commission and the U.S. government to support efforts made in international fora to acquire information as needed to improve the analysis of the rates, revenues, and costs of mobile termination. *See, e.g.*, Contribution of Malaysia to Study Group 3, ITU Telecommunication Standardization Sector (January 2005).

useful to its analysis. Sprint offers its views and data as a participant in both the wholesale and retail markets for international services, which offer very different perspectives.

As a provider of domestic and international long-distance services to U.S. consumers, Sprint offers switched dial-up connectivity to almost every country among the 161 listed in Appendix E of the *Notice*. Sprint has mobile surcharges in place for 125 countries.[16] In 83 of these 126 countries, Sprint has direct, bilateral relationships with international gateway fixed carriers (and in rare instances, with foreign mobile carriers).[17] It is these countries, which represent the mostly heavily trafficked routes, for which Sprint has reviewed its traffic statistics to make the analysis that is provided below. Sprint relies on resale of other carriers' services to reach the remaining countries. Between 70 and 80 percent of Sprint's international traffic that is not handled by resale is wholesale or business traffic, and the remainder accounts for U.S. callers using Sprint's retail consumer services. A substantial part of Sprint's wholesale business is "hubbed" traffic that originates outside of the U.S. Because the greater part of Sprint's business is in the wholesale market for switched minutes – which can experience significant volatility due to demand shifts, changes in exchange rates, and price fluctuations – Sprint's costs, rates and volumes can vary over a wide range from one time period to another, and from one geographic market to another. This makes discerning trends very difficult. By contrast, demand and rates on the consumer side are relatively stable.

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[16] This includes surcharges for two countries not listed in Appendix E: Palau at $0.06 a minute and French Antilles at $0.29 a minute.

[17] Sprint has approached major mobile operators in Europe to seek direct connections and has been refused. Vodafone suggested that Sprint join what it terms the "Vodafone Club," for a substantial monthly fee, that would permit direct interconnection but also requires a substantial transmission facility commitment, including triple diversity for call routing. Sprint finds these conditions to be untenable.

From its own experience heavily influenced by the large volume of its wholesale traffic, Sprint believes that the market has changed considerably since 2002, the year for which the data is drawn for the calculations set forth in Table 4 in Appendix E. Traffic that is terminated on mobile telephones has increased considerably and has an accelerating growth rate. Even though it is difficult to assess country-by-country trends on the basis of Sprint's share of market for termination minutes, because of the ebb and flow of Sprint's participation in the wholesale market for particular countries, Sprint is able to offer the following analysis of regional trends by comparing internal data for U.S.-originated traffic (wholesale and retail) destined for mobile termination using third quarter 2003 and third quarter 2004 traffic records. In this comparison, where Sprint has direct, bilateral relationships for termination of traffic,

U.S.-originated traffic to Western Europe for mobile termination grew 21%;
U.S.-originated traffic to Eastern Europe for mobile termination grew 36%;
U.S.-originated traffic to Asia/Australia/New Zealand for mobile termination grew 44%;
U.S.-originated traffic to the Caribbean for mobile termination grew 44%;
U.S.-originated traffic to Central America for mobile termination grew 84%.

For all of Sprint's U.S.-originated traffic (mobile and fixed, wholesale and retail) in this comparison, the growth rate was 10 percent. The percentage of Sprint's U.S.-originated traffic in the third quarter of 2004 that resulted in mobile termination was 27 percent.

Although comparisons using all traffic (U.S.-originated and hubbed) may be misleading because of the fluctuations in the international wholesale market, it is worth noting that the percentage of Sprint's total international traffic in the third quarter of 2004 that resulted in foreign mobile termination is striking. In Western Europe, that percentage was 53% ; in Eastern Europe, 50%; in Africa, 52%; in the Caribbean 49% .

Thus, even if mobile termination rates were to remain stable or even decline slightly, the increased volume of foreign mobile termination means increased out-payments by U.S. carriers and higher charges for international calling to U.S consumers. As noted above, Sprint estimates its current annual out-payment for mobile termination of U.S-originated calls to be over $120 million. When hubbed traffic is considered, Sprint currently pays over $270 million annually for mobile termination.

B. Sprint's Consumer Surcharges For Foreign Mobile Termination Are Reasonable And Are Set To Recover Sprint's Costs.

The trend toward higher mobile termination costs is reflected in Sprint's recent changes in mobile surcharges for consumers of Sprint's international long-distance services. Effective August 15, 2004, Sprint added mobile termination surcharges for approximately 37 countries, increased surcharges for 58 countries, and decreased surcharges or made no change for 34 countries,[18] reflecting the proliferation and increases in mobile termination rates globally. Sprint reviews its cost of service for foreign mobile termination on a quarterly basis and makes adjustments in the surcharge schedule as appropriate, usually no more often than once or twice a year.

Despite criticism that has been leveled at U.S. international carriers that mobile termination rates are substantially marked up in setting consumer surcharge levels, Sprint can attest that its surcharges are not a profit center. Sprint's goal in setting the surcharges is to fully recover the direct costs of mobile termination and its associated costs. These associated costs, which are significantly higher than in other switched service markets, can include bad debt, billing adjustments through customer service, dialing code abuse and fraudulent conduct. Because a number of Sprint's settlement agreements are denominated in SDRs or Euros, the continuing decline in the value of the dollar and the need to protect against exchange rate risk exposure have also become significant factors in the rate-setting process. On certain routes,

[18] This includes six countries with a current surcharge of $0.00: Guinea, Honduras, Lesotho, Madagascar, Oman, and Russia.

costs in addition to the mobile termination rate can result in adjustments on the order of 20 to 30 percent. On most routes, however, Sprint endeavors to set its rates on a competitive basis as long as cost of service recovery requirements are met. There are instances where the surcharge is less than the mobile termination rate – the cost recovery mechanism has a global focus, and is not necessarily tied to a country-by-country analysis.

Sprint's approach to setting its mobile surcharge levels is a reasonable one: Sprint seeks to avoid altering these levels frequently, as customers value stability and predictability. Its surcharge changes are posted on Sprint's website at http://shop.sprint.com/residential/voiceservices/popups/legalIntlSurchrg/legalIntlSurchrg.jsp. Sprint's website also informs customers of the dialing codes that indicate a call will terminate at a mobile telephone in a foreign country, thus implicating the surcharge. Sprint also follows a generous customer service/customer retention policy for residential subscribers who may suffer "sticker shock" based on a genuine unawareness of mobile termination surcharges.

C. Most Termination Rates Imposed By Foreign Mobile Carriers Are Well Above Cost Recovery Levels, By Any Measure.

Sprint finds it ironic that parties representing the interests of foreign mobile carriers accuse U.S. international carriers, such as Sprint, of excessive mobile surcharges, when the termination rates of many such mobile carriers are patently in excess of the costs of the service provided – interconnection and termination. The *Notice* makes note of the cost studies submitted by Sprint before the New York and Florida public service commissions that indicated long-run incremental costs ("LRIC") for mobile termination at 3.9 (in 2002) and 6.6 cents (in 2000) per minute, respectively.[19] Although Sprint has performed no further cost studies, it is Sprint's opinion that the costs of mobile termination have, if anything, continued to decline.

[19] *Notice* at note 107 and accompanying text.

The current levels of termination rates imposed by foreign mobile carriers are in contrast with the trend toward declining costs of technology and operation in wireless networks. Of the country routes used by Sprint where mobile termination rates are imposed, nearly three quarters of these countries have mobile termination rates in excess of the 6.6 cent per minute figure calculated by Sprint in 2000, and over half have rates in excess of 10 cents a minute. The latter category includes all the countries that are members of the European Community. Even if one accepts arguments that LRIC is an inappropriate standard to calculate cost recovery for foreign mobile carriers because of the demands of "calling party pays" systems, the current rate levels are well above the levels of costs that could be calculated using a generous attribution of costs and allocation of overhead.

III. THE COMMISSION SHOULD OPEN A RULEMAKING PROCEEDING TO ESTABLISH A FIRM POLICY AIMED AT REDUCTION OF FOREIGN MOBILE TERMINATION RATES.

Sprint strongly believes that any Commission inaction on this important issue would send the wrong message to foreign carriers and governments around the world. It is not necessary for the Commission, as might be inferred by a reading of the *Notice* that focused on the lengthy discussion of cost standards, to act as an impartial arbiter to judge the reasonableness of foreign mobile termination rates in close cases. Rather it is the facts that many of these rates are at indisputably high levels, that because of these rates there is a substantial imbalance of settlement payments, and that the ultimate payor of these rates is the U.S. consumer, that should drive the Commission's further decisionmaking on this matter.

Sprint acknowledges that a handful of foreign regulators have begun to address the problem of high mobile termination rates, and that primary responsibility for bringing these charges in line with costs must lie with the governmental authorities that have direct jurisdiction over the mobile carriers that impose such charges. But, as it did in the proceeding that led to the

Benchmark Rates Order, the Commission should choose not to rely solely on the good will of foreign governments to reduce an inflow of payments to their countries from U.S. carriers and consumers. Rather, the Commission should affirmatively declare its policy that excessive foreign mobile termination rates should be reduced so that they are cost-oriented and that, when the situation warrants, the Commission will act to require U.S. international carriers not to make payments toward non-cost-oriented rates that would have a detrimental effect on U.S. consumers.

Sprint believes that an appropriate benchmarks system should be considered by the Commission, similar to the original settlement rates benchmark system. As it did with the original system, the Commission should set benchmark levels that are generously formulated so that cost recovery is ensured and the terminating carriers will have incentives not to engage in call blocking.[20] A multi-year transition period should also be considered, to allow time for foreign mobile carriers and regulators to conduct the appropriate cost studies and adjust their pricing policies. Ultimately, however, Sprint believes that the highest benchmark level should be no higher than the 8 to 10 cent per minute level discussed by the Commission in the *Notice*.[21]

The Commission should also move quickly to declare a policy to counteract the trend toward new and precipitous mobile termination rate increases. In order to reduce the disruption in the marketplace and financial damage to U.S. carriers that is ultimately borne by those

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[20] Unfortunately, at this writing and since early December, Sprint's traffic for mobile termination to Nicaragua has been blocked by Enitel, the Nicaraguan international fixed carrier, because Sprint has refused to acquiesce to a $0.1216/minute mobile termination rate. According to Nicaraguan officials, the imposition of this high mobile termination rate was advocated by BellSouth prior to the sale of that company's Nicaraguan mobile carrier to Telefonica. Sprint remains hopeful that the intervention of U.S. and Nicaraguan government officials can lead to an appropriate settlement, a cost-oriented mobile termination rate, and the unblocking of Sprint's traffic.

[21] *Notice* at ¶ 40, discussing rate levels proposed by AT&T and Ofcom.

carriers' subscribers, the Commission should hold that U.S. carriers may not pay new or increased mobile termination rates that are imposed retroactively or without a minimum of 30 days advance notice of their effectiveness. The Commission should also scrutinize the adoption of new "calling party pays" regimes and the setting of high mobile termination rates by foreign governments – Sprint believes that in many cases these are simply efforts at revenue enhancement by mobile carriers rather than re-orientation of cost-recovery pricing mechanisms. In addition, the Commission should examine the barriers to direct connection to mobile carriers that are in place in Europe and elsewhere. The current relationships between European mobile carriers and European fixed carriers are opaque and, as such, provide at least the opportunity for discrimination and excessive mark-ups.

As a wireless carrier itself, Sprint rejects the notion that a benchmark settlements policy as applied to foreign mobile termination rates represents some form of "creeping rate regulation" of wireless service providers. Instead, Sprint appropriately seeks Commission intervention in an inter-carrier compensation matter. The Commission has already acted to place obstacles in the path of U.S. wireless carriers seeking compensation for termination of long-distance calls on their networks.[22] The Commission also regulates inter-carrier compensation for the termination of local calls involving wireless networks.[23] The opposition by some in the U.S. wireless industry to Commission involvement in the issue of foreign mobile termination may well spring from those carriers that are partly or wholly owned by foreign mobile carriers, and thus directly or indirectly benefit from the termination revenues those foreign carriers receive.

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[22] See *supra* at note 3.

[23] *See* 47 CFR § 51.701 (defining CMRS-LEC traffic as "telecommunications" subject to the reciprocal compensation rules).

IV. CONCLUSION

For the reasons given above, Sprint respectfully requests the Commission initiate a rulemaking proceeding with the goal of adopting rules and policies that will foster cost-oriented foreign mobile termination rates.

Respectfully submitted,

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